

passed by the General Assembly and approved by the governor, would be to go contrary to the Federal Constitution or to that of Indiana, but the duty of the court is to declare the statute unconstitutional. An act thus rejected by the highest court of the state is utterly done away with and is as powerless as if it had never been passed.

174. **The library of the supreme court** is situated in a large room of the State House convenient to the court rooms. It contains copies of most of the law books which have been published in the English language in recent years, and becomes of great value to the judges and lawyers of the state, any of whom may use the books at the library rooms.

## CHAPTER XV.

### The Fear of the Law

175. There are persons in every community heedless of any moral obligation to respect the rights of their neighbors, and the protection of honest and peaceably inclined citizens requires that those of the former class be made to fear the law. The constitution forbids cruel and unusual punishments but fines, imprisonment, disfranchisement and hanging the offender by the neck until he is dead, are considered humane and usual,

and their prompt and certain application is the aim of legislation.

176. **The criminal offenses** defined by our statutes number perhaps three hundred, the punishment prescribed ranging from a fine of one cent to life imprisonment and death. On the basis of the punishment assessable they are classified as felonies and misdemeanors, the former including all those for which the punishment may be imprisonment in the state prison, Reformatory or Women's Prison, and the latter those punishable by fines and jail sentences only. Courts and officers are supported at public expense for the purpose of apprehending criminals and bringing them to justice and prisons are at hand in which they may be confined.

177. **A prosecuting attorney** is elected by the voters of each judicial circuit, his principal duty being to prosecute criminal actions, in which the state is plaintiff. Persons wishing to complain of criminal offenses usually appeal to him, and if the facts seem to warrant it he prepares the charges, but even where an affidavit is filed without his knowledge, he must be informed of the time of the trial so that he may attend and prosecute the case. The office is constitutional, the term being two years, but the same person may serve continuously as long as the voters see fit to re-elect him.

178. **A grand jury** is convened by the circuit or criminal court of each county at least once a year and oftener if the judge deems it necessary. It is composed of six substantial citizens, who are sworn to "diligently inquire, and true presentment make, of all felonies and misdemeanors

committed or triable within the county." They are authorized to subpoena witnesses before them and to hear such evidence as the prosecuting attorney may present.

179. **Indictment.** When enough proof has been heard to convince at least five of them that an individual should be arrested and tried upon any charge, the prosecutor reduces it to writing and the foreman indorses it "A true bill", over his signature. It is then an indictment to be filed with the court, who orders a "bench warrant" issued for the arrest of the accused.

180. **Prosecution by affidavit** is allowed in all cases except treason and murder. Some competent person charges the offense in an affidavit and the prosecutor indorses his approval thereon and files the charge with the clerk who issues his warrant and the sheriff arrests the accused and brings him before the court.

181. **Arrests without warrant** are allowed where a felony has been committed and the person making the arrest knows or has good reason to believe that the one arrested committed it, but in case of a misdemeanor the arrest can be made only by an officer with a warrant or a conservator of the peace who actually saw the person arrested commit the offense.

182. **The conservators of the peace** are the judges, sheriffs, coroners, constables, town marshals, policemen and a few other officers charged with the duty of keeping the peace. Persons arrested without warrant by police officers are usually confined in the county jail or city prison till police court the next morning, unless released upon surety to appear at that time. Those so arrested by con-

stables are taken before the nearest justice of the peace and charges filed against them at once.

183. **The safeguards** against the conviction of an innocent person are a heritage from the fathers of English liberty and the founders of the Republic. Among them are the right to a speedy public trial before an impartial jury of twelve men, upon a specific, written charge; to have witnesses subpoenaed in one's behalf; to be represented by counsel; and to meet the opposing witnesses face to face, hear their testimony and cross-examine them thereon. Moreover, a presumption of innocence attends the accused throughout his trial and entitles him to an acquittal at the end unless the evidence shows him to be guilty beyond a reasonable doubt. All these are but reasonable provisions for the safety of the innocent, and are never to be regarded as ways of escape for the guilty.

184. **Emptying the Drag-Net.** The court room in which is mustered the entire capture of a city police force presents a scene of painful interest, especially on a bleak Monday morning. The homeless boy, picked up to protect him from the cold, the tramp tumbled into the jail corridor to avoid the unpleasantness of his being found frozen to death, the common drunkard, arrested because the officer could not get him to go home, the junk thief, the forger and the molder of Babbitt metal and antimony coins are specimens of a woeful lot. What becomes of them? The boy is turned over to some charitable society or the board of children's guardians. The tramp is given one hour in which to get out of the city; the drunkard pleads guilty and is fined one dollar and costs and, being unable to pay,



is sent to jail or the workhouse. The thief is found to be on parole from the penitentiary and, after communication with the warden, is returned to serve out his time. The forger pleads "not guilty" with emphasis and is given a preliminary hearing, but in spite of his ingenious defense, he is bound over to the circuit court and committed to jail upon his failure to give a thousand-dollar bond. The counterfeiter is held till the United States marshal of the district arrives to take him before a federal grand jury.

185. **The punishment** to be inflicted upon one convicted of a crime is usually left to the court or jury trying the case, but the limits are fixed by statute. Petit larceny, for example, is punishable by a fine of not more than five hundred dollars, disfranchisement for any determinate period and imprisonment, either in the county jail for any time less than one year or in the State prison for any time from one to three years, the costs of the action being added in all cases. When a fine is assessed it is part of the judgment that the defendant be committed to jail till it is either paid or replevied. This may be done by some responsible person obligating himself in writing to pay it and the costs at the end of ninety days if the defendant does not. When it is neither staid nor paid, the defendant remains in jail one day for each dollar of fine and costs, no matter in what court he was convicted.

186. **Local Prisons.** Each county has a jail, and the board of commissioners may establish a work-house also. When this has not been done, all persons accused of crime, who are unable to give bond for their appearance at the trial and all those serving jail sentences or laying out fines

remain idle in jail, unless the county commissioners put them to work on the highway. Where a work-house exists persons able to work may be committed to it, either for failure to pay a fine and costs or to serve a sentence of imprisonment. Many cities and towns, especially those remote from the county seat at which the jail is situated, have their own lockups or "calabooses" in which offenders are temporarily confined by local officials.

187. **The State prisons** are five in number, and to some one of them most of the felons are committed, while others receive young persons who require both correction and education. The names bestowed upon the latter, as well as the treatment of the inmates, are calculated to disguise somewhat the fact that they are penal institutions.

188. **The Indiana Boys' School**, located at Plainfield, is intended to receive vicious and incorrigible boys under sixteen years of age, and to train and discipline them for honorable citizenship. Circuit judges may commit those under fifteen, where their parents find them ungovernable, or upon complaint and proof that they are so and that the parents lack either the ability or disposition to govern them. Boys under sixteen who are found guilty of any crime punishable by imprisonment may also be sent there instead of to jail or the reformatory, but they may be transferred to the reformatory after they are seventeen if they do not behave themselves. Boys sent for either cause are committed until they are twenty-one, but most of them are discharged on parole before they reach that age.

The school is managed by a board of control composed

of three commissioners appointed by the governor, and they select the superintendent.

189. **The Indiana Industrial School for Girls**, with a permanent location near the city of Indianapolis, was provided for in 1903 but is not yet fully established. It is intended to serve the same purpose for girls that the school just mentioned serves for boys, and similar provisions are made for their commitment, except that they cannot be held after they are eighteen.

The management is entrusted to a board of three women, selected by the governor, and they choose a woman of suitable character and ability for superintendent.

190. **The women's prison** located at Indianapolis, is the penal institution to which women of mature years are sentenced for the commission of felonies. It is governed by a board of three women appointed by the Governor, by and with the advice and consent of the senate, and has a woman superintendent named by the board.

191. **The Indiana Reformatory** at Jeffersonville now receives only men between the ages of sixteen and thirty years who have been convicted of felonies other than treason or murder. It is managed by a board of four, not more than two of whom may be of the same political party, and a general superintendent chosen by the board.

192. **The Indiana State prison** is located at Michigan City. A board of control, consisting of three persons appointed by the governor, manages its affairs and appoints the warden. It is the "penitentiary" to

which are committed men convicted of treason and murder, and those over thirty years of age convicted of any felony whatever. Prisoners found to be insubordinate at the reformatory may also be transferred to it by the board of that institution.

193. **The indeterminate sentence law** provides that when persons are found guilty of felonies, other than treason or murder, they shall not be sentenced to prison for a definite term, but for a time not less than the minimum nor greater than the maximum provided by law for such offense—one to three years for petit larceny, two to twenty-one years for manslaughter and different terms for the other offenses.

The warden, directors, chaplain and physician of each prison constitute a board of parole thereof, and any prisoner, after he has served out the minimum time for which he was sentenced, may be released on parole if they think proper. Some responsible person must undertake to act as agent to secure proper employment for each paroled prisoner, and report to the warden once a month as to his conduct. After being released on parole, a prisoner may be arrested and returned to serve out his full time, continued on parole or finally discharged before his maximum sentence has expired, according to how he behaves himself.

194. **The Power of the County.** The sheriffs, with the help of other peace officers, are usually able to preserve order within their own counties, especially as they are empowered to call out the general posse comitatus, or summon such particular citizens as they may select to



assist them in doing so. In extreme cases, where these resources fail, or the peril appears so imminent as to require it, resort may be had to the military forces of the state. The statute says that whenever there shall be "any tumult, riot, mob, or any body of men acting together by force, with intent to commit any felony or misdemeanor, or to offer violence to any person or property, or by force and violence to break and resist the laws of this state" or those of the United States, or when any such disorder is threatened, the governor may order out the militia or such part thereof as may be necessary to quell the disorder and uphold the civil authority.

195. **The constitutional provisions** are in substance that the governor shall be commander-in-chief of the military and naval forces of the state, and may call them out to execute the laws, suppress insurrection or repel invasion; that the militia shall consist of all able-bodied white male persons between the ages of eighteen and forty-five and not exempt by law, no person being compelled to do military duty who has conscientious scruples against it; that the governor shall appoint the adjutant, quarter-master and commissary-generals, and commission all officers for terms not longer than six years. Other matters affecting the force are, expressly or by implication, left to the control of the legislature.

196. **The active militia**, if increased to the full number allowed by law, would comprise but little more than five thousand men, the remainder of the whole militia remaining "sedentary." This fraction is organized as

a single division under the name of the "Indiana National Guard," a major-general appointed by the governor being in immediate command. Most of the business relating to its organization and equipment is transacted by the adjutant-general and quarter-master-general both of whom have permanent offices in the State House. The governor is empowered to appoint two brigadier-generals when the strength of the force requires them.

197. **The rank and file** is chiefly composed of young men residing in the cities and towns. They first enlist for three years but, after serving that time, may re-enlist for a term of two years. The infantry is organized by companies, of which there may be as many as forty-eight, and the artillery by batteries, of which there can be but three. In some cases the entire company or battery is made up of men from the same town and in others the two platoons composing it are from different towns.

198. **The company officers** are a captain and two lieutenants, elected by the men of the company. The statute provides that when an association of citizens desire to volunteer as a company, a list of not less than sixty members shall be forwarded to the adjutant-general, who may, when satisfied that they are loyal to the state and the United States, with the approval of the governor, fix a time and place for the election of officers and designate an officer to preside at the election and muster in the company.

199. **Equipment.** The entire force is supplied with arms and uniforms by the state, and when in actual ser-

vice, or in camp for instruction, with tents and provisions as well. Formerly no pay was allowed to the men except for time spent in camp or in actual service, nor to any of the officers except the adjutant-general and quartermaster-general, but, by recent amendments, twenty cents for attending each drill and one dollar a day for attending target practice is allowed to privates, and larger sums to the company officers according to their rank.

200. **Organization and Officers.** Each company and battery has a number of non-commissioned officers, appointed by the commander of the regiment, upon the captain's recommendation. Four companies form a battalion, for which the governor appoints a major, and three battalions a regiment, for which he appoints a colonel and lieutenant-colonel. The artillery constitutes a battalion under the command of a major, and this battalion, as well as each regiment or infantry, has a band. Each battalion and regiment, as well as the entire division, has its own staff, consisting of a number of commissioned and non-commissioned officers and the division has a hospital and signal corps.

201. **Firing Upon Mobs.** Whenever it becomes necessary, in order to sustain the supremacy of the law, the troops may fire upon a mob, or upon any other persons, the officer in command, in the exercise of a sound discretion, directing when firing shall begin and when it shall cease. That any trifling or the suspicion thereof may be avoided, the statute absolutely forbids the use of blank cartridges in firing upon mobs.

## CHAPTER XVI.

### Counties and Townships.

202. The number of counties into which the state is divided is, at present, ninety-two. Knox, including the present state of Indiana and most of Michigan, was formed by the territorial government in 1790, and is therefore the parent county, while Newton, organized in 1859, is the youngest by sixteen years. The constitution recognizes the counties as local governments, but leaves the number and boundaries to be settled by the legislature and the people of the affected district. It does provide, however, that no county shall be reduced to an area of less than four hundred square miles, and that no county already below that limit shall be further reduced.

203. **New counties** may be formed, under statutory provisions, by the inhabitants of a district, not less than two hundred square miles in extent, holding an election for that purpose and a majority voting in the affirmative, while, by a similar process, any definite area may be detached from one county and attached to another, a majority vote of the inhabitants of such area being required.

204. **The county offices** created by the constitution are seven in number, the clerk, auditor and recorder being elected for four years, and the treasurer, sheriff, coroner and surveyor for two years each, no person being eligible to any of such offices for more than two consecutive terms. The constitution further declares that such other county and township officers as may be necessary shall be elected or appointed as the law may provide.



The manner of transacting county business is not specified in the constitution, though the existence of boards for that purpose is implied, in one provision authorizing the General Assembly to confer upon them powers of a local, administrative character and another empowering them to provide farms as asylums for the poor. In recent years, the legislature has seen fit to divide the responsibility for such business between two boards, the council fixing the amount to be expended for a certain purpose, during the year, and the commissioners directing its distribution in detail.

205. **The board of county commissioners** is composed of three voters, one being from each of the three districts into which the county is divided, though all are elected by the voters of the whole county. The term of office is three years, one vacancy occurring each December.

206. **Their duties** are numerous and some of them very important to the citizens and taxpayers of the county. They have full control of all the property of the county, real as well as personal, and might even sell the court house square if they saw fit. The opening, vacating, construction and repair of highways occupy much of their attention; all bills and accounts against the county have to be submitted to them, and if any dispute arises as to the validity or amount of any bill, they sit as a court to decide it; the evidence in all applications for license to sell intoxicating liquor is heard by them and the license granted or refused. The construction and maintenance of bridges, levees and public drains also come within their jurisdiction, and they may, under certain restrictions, borrow money on

the bonds of the county. They are authorized to offer bounties for the capture of criminals and certain obnoxious birds and animals and to appoint to vacancies in a number of county and township offices; and finally they are charged with the duty of auditing the accounts of all officers having anything to do with the handling of county or township funds. When sitting as a court, for any purpose whatever, they may compel the attendance of witnesses and punish for contempt, and an appeal lies from their decision to the circuit court. The auditor is ex officio clerk of the board, and keeps a permanent record of their proceedings, while the sheriff attends to preserve order and execute any writs they may place in his hands.

207. **County Attorney.** Numerous and varied as their duties are, and often requiring the interpretation of intricate legal provisions, they find it necessary to appoint a county attorney, who advises them as to the law, takes care of their law suits, and in some counties also defends all persons accused of crime who are unable to procure an attorney.

208. **The county council** is a body of men required to be chosen at the general election every four years, beginning with 1902. The board of commissioners divides the county into four districts as nearly equal in population as may be done by grouping adjoining townships, and one councilman is elected by the voters of each district, while three are elected at large, by the voters of the whole county.

209. **Official Estimates.** Near the first part of August, each year, the various county offices file with the auditor

their several estimates ; under the heads of salary of the officer, deputy hire, and supplies for the office ; of the amounts which they think necessary to run them during the next calendar year. The clerk makes out separate estimates for each court of which he is clerk, for cases tried in other counties on change of venue, and for insanity inquests ; and the commissioners submit their estimates of the amounts necessary to maintain the court house, jail, poor asylum and other buildings and institutions and for the building of bridges, repair of same, the board of health, repair of gravel roads, holding of elections and various other items.

**210. Duties of the Council.** It is, of course, impossible for the officers to foresee, in detail, all necessary expenses, but they are expected to approximate the amounts under each head, and the council then considers each item and allows such as seem to them reasonable, disallows any which they think entirely unnecessary and reduces those which are proper but extravagant in amount. The allowance of an item, for example, eight thousand dollars for the repair of bridges, amounts to nothing more than permission to the board of commissioners to expend that sum for that particular purpose during the year. If they do not use it all, it reverts to the county fund, and if it becomes exhausted before the end of the year, the council may, if they think proper, make an additional appropriation. Appropriations are sometimes specific, as, for example, one hundred dollars for putting a new floor in the Pipe Creek bridge, and the commissioners cannot divert the amount to any other purpose.

The council also fixes the rate of taxation for county purposes, and of every tax required to be uniform throughout the county, but of which the rate is not fixed by law.

**211. The county auditor** keeps the accounts of the county and is one of the most important officers. He is ex officio clerk of the board of commissioners and the county council, and secretary of the board of review. One of his most laborious tasks is the preparation of annual tax duplicates from the "transfer" books and "assessment sheets" in his office.

**212. The transfer books** contain complete lists, arranged alphabetically, by townships, cities and towns, of all the land owners of the county, together with a brief description of the lands owned by each, and the assessed valuation of the land itself, and the improvements thereon. Before a deed conveying land from one person to another can be recorded, it must be taken to the auditor, and the property conveyed transferred for taxation to the new owner. The assessment sheets are lists of each person's personal property, made out by the township assessors.

**213. The tax duplicate** is a list of all the taxpayers of the different townships, cities and towns in the county, together with a brief description of the lands, if any, their value and the value of all personal property, and the whole amount of taxes charged to each person. One copy of the duplicate remains in the auditor's office and the other goes to the treasurer, as his guide in the collection of revenue.

**214. Other accounts** kept by the auditor relate to the various school funds, the amounts advanced to the townships for the relief of the poor, and the separate appropri-



tions made by the county council. In short, he is the general bookkeeper of the county. Records of all licenses for the sale of liquors, all sales of lands for taxes, and all loans made of the state school fund, are likewise kept in his office. A warrant or order from him is necessary before the treasurer can pay out any of the county funds for any purpose whatever.

215. **The treasurer** receives all taxes paid for the support of the state, county and township governments and is held to strict account for their safety and proper application. Twice a year he makes a settlement with the state, and pays to the state treasurer all moneys collected for state purposes. He may turn over the township taxes to the trustee only upon the auditor's warrant. If persons against whom taxes are assessed neglect or refuse to pay them, it is his business to enforce payment by selling their property, if necessary. Local assessments, such as those for public ditches and gravel roads, are also collected by the treasurer, but assessments for street improvements and taxes levied by cities and towns are collected chiefly by other persons.

216. **The recorder** is charged with the safe keeping of all the records of deeds, mortgages and other instruments affecting the title to lands, which have been made since the county was organized, and also with recording new instruments of the same character. In some of the counties the records already fill several hundred large books, and the number is constantly increasing. The deed records contain copies of all conveyances of lands, and in large counties, particularly where there has been much trafficking in town lots, they are so voluminous that a title could hardly

be traced without the help of a systematic index. Mortgages of chattels and real estate, mechanics' liens, leases, articles of incorporation, the names of trustees of churches and lodges, plats of cities and towns and additions thereto, and a number of other matters, are recorded in the proper books and carefully indexed for convenient reference.

217. **The index** is arranged alphabetically, and in most cases is double, so that the record may be found though the name of but one party to the instrument is known. The date and character of the instrument, the consideration, and a brief description of the property involved, are also there set out.

218. **The clerk of the court** is also burdened with many records. He is required to keep the dockets and order books, which contain records of the proceedings of the circuit, superior and criminal courts of his county. All judgments, decrees and transcripts of judgments, lists of jurors and witnesses, inventories, appraisements and reports of executors and administrators, wills, and other instruments relating to court proceedings, are recorded by him, and he is the custodian of official and appeal bonds, coroner's reports and the findings of insanity inquests. He issues marriage licenses, summonses, warrants and subpoenas, and, during vacation of the circuit court, letters of execution and administration as well. He and his deputies are authorized to administer oaths and required to execute pension vouchers without charge.

219. **The sheriff** is the chief executive and peace officer of the county. If his zeal denied him repose till he had performed everything within the scope of his duty, he

would be a very busy man. After preventing lynchings and riots and all violent disorders, and pursuing and capturing felons and those guilty of grave misdemeanors, he would put an end to unlawful sales of liquor, arrest every one who used profane language in his hearing, and bring to justice the least offender along with the greatest. As a matter of fact, however, the small offenders are usually left to the care of policemen, constables and private citizens with interest enough to make affidavit against them.

220. **Other duties** of the sheriff are to keep the jail, to convey convicts from his county to the state prisons, to safely keep all prisoners committed to jail, to arrest accused persons upon bench and clerk's warrants, to serve, by reading if possible and if not by leaving a copy at the last and usual place of residence of the person named, all summonses and subpoenas regularly placed in his hands. Where a judgment is rendered against a party who does not pay it, the sheriff must seize and sell enough of his property, if any is found within the county, to satisfy the judgment debt, together with all interest and costs.

221. **The coroner** is a conservator of the peace, elected by the people and commissioned by the governor. His powers and duties are the same as those of the sheriff in keeping the peace, suppressing affrays and arresting offenders against the criminal laws. In all matters in which the sheriff is interested, or when he is absent or incapacitated to serve, or when the office of sheriff is vacant, the coroner performs all duties pertaining thereto. In a proper case, he might even take charge of the jail and im-

prison the sheriff therein, but he seldom exerts this mighty power.

His peculiar function is to hold inquests upon every dead human body he learns of anywhere within his county, where the person is supposed to have met death by violence or casualty. He may subpoena witnesses for that purpose, and their testimony must be written down and filed with the clerk, along with the record and verdict of the inquest. If he finds that the death of the person was due to felony, he may issue his writ to a constable, commanding him to arrest the felon and take him before a justice of the peace for examination. He also takes charge of all money and other valuables found upon the body, and must dispose of them according to law.

222. **The county surveyor** is the official surveyor of lands lying outside the corporate limits of cities and towns. The owner of any such land may have a survey to determine his corners and lines, but notice must be given adjoining owners, so that they may attend and present their claims. The surveyor usually marks the corners by stones, and records the survey in the records of his office. It thus becomes prima facie evidence of its own correctness, but any land owner affected thereby may appeal to the circuit court, at any time within three years. If, after hearing all the evidence, recorded and oral, the court finds the survey erroneous, he is required to decide what the true boundaries are.

In any case where the surveyor is interested the board of commissioners appoint a deputy to act in his stead, but in other cases he appoints his own deputies. He is em-



powered to take acknowledgements of deeds and mortgages, to administer oaths in proper cases, and is ex officio a drainage commissioner.

223. **Drainage commissioners** are officers whose duties relate to the construction and repair of public ditches and drains. In addition to the surveyor there is one such officer appointed by the board of county commissioners, who holds office for two years unless sooner removed. These two commissioners are required to inspect the lands likely to be affected by the proposed drain, and report to the court regarding its utility and practicability, and if they recommend its construction, to prepare a list of all lands affected thereby and assess the benefits and damages to each tract. Proceedings to establish a public drain are commenced by filing a petition in the circuit or superior court or before the county commissioners, and in either case the work may be defeated at the petitioner's cost unless it appear that the proceeding is regular, the plan such as to secure the best results, and the benefits to be secured greater than the cost.

224. **A county assessor** is elected for a four-year's term, with full power to examine into the ownership of property and place upon the tax lists, for taxation in the name of the owner, all property which may have been omitted by the township assessors.

225. **The county board of review** is composed of the county assessor, who is its president, the auditor, who acts as secretary, the treasurer, and two freeholders appointed by the judge of the circuit court. The board meets annually on the first Monday in June and continues till its

work is completed. It hears all complaints as to the assessments, adds omitted property, corrects errors, and raises or lowers any assessment which it considers necessary, for the purpose of equalizing assessments throughout the county. For this purpose, it may call and examine witnesses upon oath.

226. **The county superintendent** is elected by the township trustees of the county on the first Monday of June every fourth year, counting from 1899. No one is eligible to hold the office unless at the time of his election he holds a life, professional, sixty months, or thirty-six months' state license to teach in the common schools.

He exercises a general superintendence over the schools of the county, holds the county institute, visits each township institute, conducts the examination for teachers' license and for graduation in the common branches, visits the schools while in session, and is a sort of general adviser of the teachers and school officers of the county.

227. **The county board of education** is composed of the county superintendent, who presides over its meetings, the several township trustees, and the chairmen of the school boards of the towns and cities of the county. It meets semi-annually, to "consider the general wants and needs of the schools and school property" and "all matters relating to the purchase of school furniture, books, maps, charts, etc." While it is, doubtless, a body of considerable influence, it possesses little absolute power.

228. **A board of children's guardians** may be created in each county, the circuit court appointing the members. Each of the six must be a parent, and three of them

women. The term of office is three years, two members being appointed each year. It is given the care and supervision of all neglected dependent children under fifteen years of age, residing within the county, and may take under its control, upon order of the court, any abandoned or neglected child or any child whose parents treat it cruelly, permit it to beg on the streets, or are, by reason of drunkenness, viciousness or evil associations, unfit to rear it.

229. **Probation Officers.** The circuit judges may appoint one or more discreet persons to act as probation officers in each county, and is required to appoint at least one in each county of more than fifty thousand inhabitants. Their duties are to investigate the cases of boys under sixteen, and girls under seventeen, years of age, who are charged, in any court, with crimes other than treason or murder, and to report to the court as to what should be done for the good of the child. When necessary the case may be transferred to the juvenile court for decision.

230. **Board of County Charities.** In each county the judge of the circuit court may, and upon the petition of fifteen reputable citizens must, appoint six persons, at least two of whom shall be women, and not more than three of whom shall be of the same political belief, who shall constitute a board of county charities. The appointment is for three years, two members being appointed each year.

At least once each quarter, and oftener if it seems necessary, the board, or a committee of its members, visit the jail, poor ayslum, homes where orphans are supported at county expense, lockup if any, and any other public charit-

able institution in the county, for the purpose of investigating the economy of management, cleanliness, discipline, and comfort of the inmates and general conditions.

They make a written report quarterly, to the board of commissioners, and annually to the circuit judge, forwarding a copy of each to the board of state charities, and they may, at any time, offer suggestions to the persons in charge of any such institutions or to the county commissioners, as to means of improving the condition thereof.

231. **County Institutions.** The location of the county seat is a matter which sometimes results in strenuous controversy. In most of the counties the present location has distanced all rivals, but the statute makes elaborate provisions for holding an election to vote upon the question of a change, and for making a change if the measure carries.

232. **The court house** is located at the county seat, and in it the auditor, recorder, treasurer, clerk, sheriff, superintendent and surveyor, and sometimes the coroner, assessor, and drainage commissioner, have their offices, and the circuit, superior, criminal, and commissioners' courts their several rooms. The commissioners are required to provide and maintain the court house, and assign the rooms for the purposes mentioned above, but any court may make allowances for furnishing, lighting, and heating its own court rooms.

233. **A jail** must also be provided by the commissioners, and in connection therewith it is usual to have a sheriff's residence also.

234. **An asylum for the poor** being necessary, the counties have generally purchased farms for that purpose,



and erected buildings thereon. The board of commissioners appoint a superintendent for the asylum, or "infirmary," as it is often called, who holds his office for two years, and is required to manage the institution to the best interests of the county, require the inmates to work what they are able, enforce discipline, comply with the rules and regulations prescribed by the commissioners, and be guided by suggestions from the board of state charities. He usually lives, with his family, in the asylum.

235. **Orphans' Home.** The board of commissioners is required to make provision for the support and education of orphans, dependent, neglected, and abandoned children, and it is unlawful to keep any child between three and seventeen years of age in the poor asylum for a longer period than ninety days. The option is given the commissioners to provide the county with an orphans' home of its own, join with other counties in maintaining a joint home, or pay for the support of such children in institutions kept by other persons or societies.

236. **Where homes** are established they are open to children domiciled in the county, and when a child is found in one county which really belongs to another, the trustee of the township in which it is found usually has it conveyed to the county liable for its support. To protect the counties from imposition, it is made unlawful to bring any dependent child into the state, for the purpose of placing it in an orphans' home, without the consent of the state board of charities. This board also appoints one or more agents to visit and inspect these homes and report their condition to the board, and at the same time to seek homes, among

worthy citizens, for children supported by the counties, and to visit those entrusted to the care of citizens, and see that they are properly treated.

237. **Townships.** The statute provides that the board of commissioners may divide the county into as many townships as the convenience of the citizens requires.

Ohio and Blackford counties have four townships each, and Allen twenty, the average of all the counties being eleven. Each township is a body corporate, its full name being, for example, "Cicero Township of Tipton County," and in that name it may contract, sue and be sued, and transact its proper business. The officers are a trustee, assessor, justice of the peace, constables, and members of the advisory board.

238. **The township trustee** is elected at the time of the presidential election, and cannot succeed himself in office. His duties are, in general, to transact all the business of the "civil" township, and of the school township, which is a separate corporation covering the same territory. He receives all township moneys and pays them out according to law, keeping a separate account of the sums belonging to the special school, tuition, township, poor, dog, road, and other distinct funds, and record all his official acts in a book kept for that purpose. Besides this he is ex officio overseer of the poor, election inspector, and fence viewer.

239. **In line fence quarrels** he may intervene, upon notice from any person that the owner of lands adjoining his refuses or neglects to bear his part of the expense of a fence, which is part of the latter's enclosure. If notice from the trustee is not heeded by the person complained of, the

trustee may let the contract for the fence, and create a lien upon the lands enclosed, for an equitable portion of the contract price.

240. **As overseer of the poor** it becomes his duty to relieve promptly the needs of the poor of his township. When a person has become a permanent charge upon the public he should have him removed to the county infirmary, but in case of temporary or partial dependency, he may furnish aid to one person or family to the extent of fifteen dollars, and must then refer the case to the county commissioners, who may authorize or refuse further aid or direct that the person be removed to the infirmary. In case of sickness, accident, or death, however, he may furnish any amount necessary for medical or surgical aid or burial expenses.

Poverty is not a crime, nor is the poor asylum a prison, so that no responsible person can be sent or kept there against his will, but those permanently dependent are generally willing to make it their home when the trustees and commissioners think proper to receive them. In many cases insane persons, whom it is necessary to confine, are kept in cells at the infirmary, year after year.

241. **State Anatomical Board.** Somewhat aside from the present discussion, it may be said that the legislature of 1903 created a board in the likeness of nothing in heaven or earth or the waters under the earth, but composed of gentlemen of honor and high character and intended for the worthy purpose of supplying human bodies for dissection and scientific examination, and at the same time preventing grave robberies, and like crimes incident to the traffic in

them. The president of the state board of health is chairman, ex officio, and one member is chosen from the faculty of each medical and dental school in the state.

It is made the duty of every officer, agent, or servant of any county, township, town, prison, asylum, infirmary, or any other institution supported in whole or part by public funds, to turn over to the anatomical board any dead body he may find on his hands for burial at public expense. In any case, however, a relation of the deceased person may claim the remains, and the bodies of travelers, other than tramps, are buried at public expense if necessary. The board keeps a record of all the bodies received by it, and distributes them among the medical and dental colleges of the state, in proportion to the number of students in actual attendance.

242. **A township assessor** is elected for four years, at the time of the presidential election. His duties are to prepare lists of the taxable property of his township, and assess the value thereof, and at the same time accumulate such information of a statistical character as may be required by law. He makes a general valuation of real estate every four years, counting from 1891, and on other years, while making the annual assessment of personal property, he adds any lands which may have been omitted, and notes the changes in improvements. Personalty is assessed every year, between March first and May fifteenth, with reference to the ownership on March first. The assessor, or his deputy, calls upon each taxpayer and requires him to make a sworn statement of his property, upon a form of "assessment sheet" prescribed by law.



From these sheets, and the transfer books in the auditor's office, he prepares lists, in tabular form alphabetically arranged, showing the kind and value of each person's property, and files them with the auditor. The board of equalization revises such lists, and, as corrected by it, they serve as a basis for compiling the tax duplicate.

**243. Justices and Constables.** One or more justices, and as many constables as justices, are elected by the voters of the township, at the general election every fourth year counting from 1894. Their duties have been sufficiently discussed, except to say that justices are authorized to acknowledge deeds, mortgages, and other instruments requiring it; to administer oaths, and solemnize contracts of marriage.

**244. The advisory board** is composed of three freeholders, who are voters of the township. They are elected at the same time as other township officers and serve for four years.

They meet annually, on the first Tuesday in September, and at other times when necessary, for the discharge of duties similar to those of the county council. At the regular September meeting the trustee lays before them his estimates of the amounts needed for the various purposes of the township during the ensuing year and they make appropriations of such amounts as they consider necessary, and levy the taxes accordingly.

## CHAPTER XVII.

### Cities and Towns

**245. A Bit of Grumbling.** It is somewhat remarkable

that the subject upon which statutory law has been most voluminous should have been entirely ignored by the constitution, yet such is the fact. Municipal corporations were not even hinted at till the amendment of 1881, and it merely prohibited them from incurring debts in excess of two per cent of the taxable property. With this exception the General Assembly has exercised a free hand in dealing with the subject, and the net result is a powerful argument in favor of constitutional limitations. A requirement of uniformity, similar to that laid down for the conduct of county and township business, would have freed our statute books from much that is painful and perplexing.

All former laws, with their absurd classification of cities, were finally repealed by an act of 1905, covering the entire field of city and town governments, and introducing a fairly uniform system.

**246. Town Corporations.** A community, however populous, is governed by the county, township and road district officers until it has been incorporated by proper legal steps. The first of these is the filing, with the county commissioners, of a petition showing the boundaries, area and population of the proposed town, which petition must be signed by at least one-third of the voters therein. The commissioners then order an election, and if a majority of the votes cast are in the affirmative, declare the town incorporated, under the name suggested in the petition.

A town is divided into from three to seven wards, and one member of the board of trustees is elected from each ward, but by the voters of the entire town. The elective officers, beside the trustees, are a clerk and a treasurer, but

the board of trustees may adopt an ordinance permitting both these offices to be held by the same person. The board also appoints a marshal, fire chief and street commissioner or, if it sees fit, imposes the duties of either or both of the others upon the marshal.

247. **Incorporation as a city** is also a matter left to the choice of the people, though the step can only be taken by an incorporated town having a population of at least two thousand. The petition, signed by at least one-third of the voters, is filed with the town trustees. If there has been an enumeration taken within two years, by any official authority, showing the required number of inhabitants, the election is ordered at once, but if there has been no such census then the marshal must first take it. If a majority vote "yes" the result of the vote is recorded in the office of the county clerk, and the town becomes an incorporated city.

248. **Regular city and town elections** are held upon the Tuesday following the first Monday in November every four years beginning with 1905. The terms of officers elected at the first election begin at different times, but all expire at noon on the first Monday in January, 1910, and thereafter the terms are four years, counting from that date. No elective officer of either a town or city is eligible to succeed himself, or to serve more than four out of any period of eight years.

249. **Cities are classified** upon the basis of population, as shown by the last preceding United States census. The first class includes Indianapolis alone, with no rival likely to join her soon; the second class, forty-five to one hun-

dred thousand inhabitants, includes Evansville and Fort Wayne, and the third class Terre Haute, South Bend, Muncie, New Albany and Anderson. The fourth class, cities of from ten to twenty thousand, comprises Richmond, Lafayette, Marion, Logansport, Elkhart, Michigan City, Elwood, Hammond, Jeffersonville, Kokomo and Vincennes, four of which are not county seats. The fifth class includes all cities under ten thousand, the former regime being largely continued so far as they are concerned.

250. **The elective offices** common to all cities are those of mayor, clerk and councilmen. In cities of the fourth and fifth classes a treasurer is provided for, and in those above the fifth class a judge of the city court as well. The common council consists of one member elected from each ward, by the votes of the people thereof, and from two to six members are elected at large, by the voters of the entire city. Where there are as many as four, and not over twelve wards there are half as many councilmen at large as there are wards, ignoring fractions.

251. **Distribution of Powers.** In cities of the first four classes the functions of government are carefully apportioned among the usual departments, while in those of the fifth class the mayor is a judicial as well as an executive officer, and a considerable amount of ministerial responsibility rests upon the council, in addition to its legislative duties.

252. **The legislative power** is vested in the common council, which is required to meet in regular session at least once a month, and may meet at other times upon the



call of the mayor, or otherwise as the rules shall provide.

In cities of the first and second classes the council selects one of its members to preside, while in other cities that duty is performed by the mayor. The city clerk attends, as clerk of the council, and keeps the minutes of its proceedings, recording the "ayes" and "nays" on the passage of every ordinance and resolution, and sometimes on other questions.

The will of the council relative to the government of the city, the control of its property and finances, or the appropriation of moneys from the treasury, may be expressed in the form of an ordinance, order, resolution or motion, passed by an "aye" and "nay" vote and duly recorded by the clerk. The mayor possesses a veto power, and to pass a measure over his veto requires a two-thirds vote of all the councilmen-elect. Penal ordinances do not take effect till they have been published for two weeks in a newspaper, or in pamphlet form and distributed by the city.

253. **City councils and town boards** have many points in common, though higher powers are vested in the former. Both exercise control over the other officers of the municipality, and over its finances, property and business in general; both are authorized to adopt ordinances, not inconsistent with the constitution and laws of the state, which become the law of the corporation; both may adopt regulations for fire protection and proper sanitation; declare, abate and remove all nuisances, protect the citizens from offensive noises, smoke and smells and the perils of fire arms and steam boilers; establish cemeteries and markets, build market houses, license certain business, restrain dis-

orderly conduct, gambling and prostitution; levy taxes and control the affairs of the community in matters too numerous to mention.

254. **The chief executive** and administrative authority is vested in the mayor, who appoints, and may remove at will, the heads of departments and other appointive officers. It is his particular duty to see that the ordinances of the city and laws of the state are executed and enforced, and to exercise a general supervision over subordinate officers. He is held responsible for the good order and efficient government of the city, and is required, from time to time, to inform the council as to its financial condition and to make such recommendations in writing as he deems expedient. He exercises the veto power already mentioned, and may, at any time, and without notice, appoint three competent persons to examine the accounts, money, securities and property pertaining to, or in charge of, any department, officer or employe of the city.

255. **Six executive departments** are established in the larger cities, each of which is presided over by its own officers, has separate apartments and systems of records, and administers a distinct function of the city government. Before the close of the fiscal year the head of each department is required to prepare an estimate, itemized as particularly as possible, showing the amount of money needed for such department during the ensuing year. The controller prepares a similar estimate of expenses not belonging to any department, and the whole matter of expenses is then submitted, for discussion, to a joint meeting of the heads of departments and committees. After hearing the

discussion, the controller prepares a report to the mayor, setting out in detail the sums he considers necessary for the next year's expenses, and the rate of taxation required to produce the total amount. With this report before them, the finance committee of the council prepare an ordinance fixing the rate of taxation, and another making appropriations, by items, for the use of the several departments and for other city purposes. The council is required to act promptly, upon these ordinances, but may amend or defeat them at its pleasure. Should an emergency arise for further appropriations, the council may make them at any time, by a two-thirds vote and upon the controller's recommendation.

256. **The department of finance** exists in all cities above the fifth class. The controller, appointed by the mayor, stands at its head, with the obligation upon him to audit, inspect and revise, the accounts of the other departments, and all other accounts in which the city is interested; to provide forms and require reports from the other departments; to issue all orders for the payment of money from the treasury; to keep separate accounts of each item of appropriations, and to see that no item is overdrawn; to issue all licenses, and to manage generally and direct the finances and accounts of the city.

257. **The department of public works**, in cities above the fifth class, embraces the city civil engineer and the board of public works. The former is appointed by the mayor and is largely under the direction of the latter, his statutory duties being to keep an accurate record of grades

and lines of sewers and such other matters as may be required by the duties of his office.

258. **The board of public works** is the head of this department. It consists of three members, appointed by the mayor, not more than two of whom can be of the same political party, and no one of whom can act on behalf of the board except pursuant to an order regularly made at a board meeting when at least two members were present.

259. **The duties of the board** are to acquire and control such property, personal and real, as is needed by the city for any public purpose; to design and execute the improvements and repairs thereof; to lay out, open, vacate, change, establish the grade, and carry out the improvement of streets, alleys and public grounds; to provide for the supply of gas, water and light for the city itself and citizens as well; to construct bridges, culverts, levees, drains and water courses; to establish a system of sewerage and provide for the removal of garbage and carrion, and to discharge all other duties of an executive character not assigned to any other executive department.

260. **A department of public safety** exists in cities of the first and second classes, and in those of the third class, where the council has not otherwise provided. In all cities of the fourth class, and those of the third in which this department has been abolished by ordinance, all the duties pertaining to it are discharged by the board of public works. In Indianapolis, Fort Wayne, Terre Haute and South Bend, where they have the department and no metropolitan police system, its duties are very important.

A bi-partisan board of three commissioners, appointed



by the mayor to serve during good behavior, constitute the head of this department. The care, management and control of all matters, and all property, pertaining to the fire and police forces, the providing of fire escapes, and the inspection of buildings, boilers, market places, foods, pounds and prisons, fall within the duties of this board.

261. **The department of assessment and collection** has for its head the city treasurer. In all cities of the first three classes its work is performed by the county treasurer, who is declared to be *ex officio* city treasurer as well. In cities of the fourth and fifth classes, which have their own treasurers, as well as in those just mentioned, the valuations of property are taken from the general assessment lists. The county auditor places the city tax in a column of the duplicate prepared by him, and the county treasurer collects the money, leaving the city treasurer little to do but collect the local assessments, keep the city's securities and funds, and disburse the latter upon the controller's warrant.

262. **A city attorney**, appointed by the council in cities of the fifth class and by the mayor in all others, constitutes the department of law. He has charge of all the law business of the city, is legal advisor of all the departments of its government, and prosecutor of violations of city ordinances. He is further required to draw up all ordinances, leases, deeds, contracts and other legal documents in which the city is interested, and to keep safely the papers pertaining to his office.

263. **Department of Health and Charities.** In every city of the state the mayor appoints a bi-partisan board of

three commissioners, known as the "board of health," which controls the department of health and charities. Under its charge are all matters relating to the public health, the enforcement of laws for its promotion, the management of the city hospital and dispensary, and all other public charities maintained by the city. It may also prepare ordinances for the protection of health and for securing proper vital statistics; for the maintenance of an ambulance service and the inspection of plumbing and sanitary drainage. The commissioners appoint one of their number to act as secretary, who is usually called the "health officer." The law provides that such officer shall be a physician in good standing and well informed in sanitary science, and, as a matter of fact, he is usually the only active member of the board, the others taking an advisory part only. In cases of the quarantine of communicable diseases, and elsewhere where necessary, the police force is looked to for aid in enforcing the orders of this department.

264. **The clerk**, of either a city or town, is a ministerial officer elected by the people, his principal duties being to attend the meetings of the common council, or board of trustees, and record the proceedings thereof, and to keep the books, papers and records belonging thereto. He is keeper of the corporate seal of a town, issues all licenses and prepares the assessment duplicates. In the different classes of cities he is assigned various duties connected with the several administrative departments.

265. **The police force** is an important factor in every municipal government, its powers and duties being to pre-

serve the peace, prevent crime, detect and arrest offenders, suppress riots, mobs and insurrections, disperse unlawful and dangerous assemblages, prevent the blockading of streets and highways, assist and advise the traveling public, recover stolen property, and safeguard the morals of the community. One member of the force is detailed to act as "humane officer," whose duty it is to detect and arrest all violators of the humane statutes, and the mayor or board of public safety may appoint a woman to act as police matron. While the law gives a matron the same powers as a regular policeman, it is her particular duty to take charge of children and women prisoners, search them and see that they are properly cared for at the jail or city prison.

266. **How Controlled.** In towns the police duties are performed, in theory at least, by a marshal, elected by the board of trustees, and such number of deputies, not exceeding one for each ward, as the board may authorize him to appoint. The cities all have regular forces paid by the city, though in those of from 10,000 to 35,000 and from 50,000 to 100,000 inhabitants, the management is entrusted to the board of metropolitan police commissioners, appointed by the governor. In cities of the fifth class the force is in charge of a marshal, appointed by the mayor, and in Indianapolis, Fort Wayne, Terre Haute and South Bend it is controlled by the board of public safety.

Where the office of city marshal has been abolished a chief of police, or superintendent, is responsible for the discipline and good conduct of the force. He assigns the

captains, sergeants, detectives and patrolmen to their districts or posts, prescribes the hours of service, and details them upon special duty when required.

267. **The marshal** has been dispensed with in the larger cities, and the duties of his office entrusted to the police. In cities of the fifth class, and in towns, he flourishes, with the power, jurisdiction and liabilities of a constable of the township, and often with the responsibilities of fire chief and street commissioner resting upon him as well.

The judicial power is vested in the city court, presided over by the mayor in cities of the fifth class, and by the city judge in all others. The power extends to prosecutions for the violation of all city ordinances, for petit larceny, and for misdemeanors which may be punished by a fine of twenty-five dollars or less without a jail sentence, or for which the penalty cannot exceed a fine of five hundred dollars and a jail sentence of six months, which is the extreme penalty a city court can impose.

268. **The judge** is chosen at the regular city election, and in cities of the first two classes the city clerk is also clerk of the court. In cities of the third and fourth classes, the judge, and in those of the fifth class, the mayor, is required to perform his own clerical work. A member of the regular police force is detailed by the chief to act as court bailiff, and to collect the fines upon which an execution has issued.

269. **Various minor boards** are provided for in the various classes of cities, some of them absolutely and others conditionally. Where a city is levying a tax for the gradual extinguishment of its bonded indebtedness, the control-



ler and two other persons, appointed by the mayor, form a board of sinking fund commissioners to take charge of, loan to the highest bidder, and otherwise manage the fund derived from such tax. Provision is made for a firemen's pension fund, and a police pension fund, in cities of the first and second class, and such smaller ones as see fit to establish them. The board for the management of the former fund is composed of the mayor, fire chief, and four firemen elected by the members of the force, while the latter fund is managed by the mayor, city treasurer, chief of police, and six policemen elected by the members of the force. The object of each of these funds is to provide a means of relief for members of the force becoming disabled while in the discharge of their duties or retiring on account of age. They are derived from assessments upon the members of the force to which they belong, fees and rewards received by them and voluntary donations.

In cities of the first and second classes a bi-partisan board of four park commissioners has charge of the whole matter of buying and condemning lands for park purposes, laying out and beautifying the same, and managing the parks and public grounds of the city.

## CHAPTER XVIII.

### Taxation and Public Works.

270. The right to tax a citizen is one of the highest prerogatives of government, and can only be justified upon

the ground that the person taxed receives compensatory benefits from the government. Consequently, no tax can be justly levied, or any public funds expended, except for a public purpose. It is not essential that the direct benefits accrue to the people in general, but the advantage to them must be real. The State Soldiers' Home affords an immediate advantage only to those who enjoy its hospitality, but the public is interested in partially repaying a debt of gratitude to the soldiers, and so treating them as to encourage enlistment in any future time of need.

271. **Locality of a Tax.** Some enterprises are public to an extent justifying their promotion at the expense of all the people of the state, while others, equally proper, are public only within a limited area. A citizen of Angola is properly taxed for the maintenance of the insane asylum at Evansville, but might well complain if compelled to contribute for the asphalt pavement of one of her streets.

For this reason taxes for some purposes are levied by the state upon all localities alike, the rate being fixed by the General Assembly, while for other purposes the power is entrusted to the counties, townships, cities, and towns, the people of each being left to compromise as they see fit between the inconvenience of paying for public improvements and that of doing without them, and the dangers of extreme measures being lessened, in many particulars, by statutes limiting the rate of taxation. School trustees, for example, may not levy more than fifty cents upon the hundred dollars, for school purposes other than tuition, and thirty-five cents for tuition.

The matter of education is of both general and local in-

terest. Congress considered that the establishment of schools in Indiana was an object worthy of extensive donations, and the state raises funds by taxation and sets apart large sums derived from other sources, to be used in the same cause. The general interest requires that every child shall be educated, and the general funds, devoted to the hiring of teachers, are apportioned among school corporations according to the number of children of school age, as shown by the annual school enumeration. The question of whether children attend in a log school house or one of marble being of local importance only, is left to the school trustees, whose constituents pay the bills.

A troublesome question arose, in some of the school corporations, when it was found that the highest rate of taxation allowed did not supply enough revenue to pay tuition for the shortest term allowed by law, or six months, and to meet it the act of 1905 levies an annual tax of three-fifths of one cent on each hundred dollars for a common school tuition fund, to be distributed to such school trustees as find the requirement too much for their own resources.

272. **The Building and Repair of Highways.** A century ago, when the great West lay tenantless and undeveloped, the national government might well undertake the building of a road from Baltimore to St. Louis, but at present it would be hard to justify the maintenance of that road by the United States, or even by the states through which it passes. The portion in Indiana is still called the "National Road," but its utility is simply that of a local turnpike, and as such it is now kept up. The same may be said of the "Michigan Road," extending from Ft. Wayne

to Madison. Built, originally, by the state, with the help of large federal donations, they gradually lost their importance as great thoroughfares and fell, at last, upon the counties and districts through which they pass. Railroads and electric lines have usurped the business of transportation till the average citizen has little use for public roads outside of his own immediate neighborhood, and is, therefore, unwilling to pay for keeping them in repair. The Apian way, and the king's highways were once subjects of imperial pride, but now, under changed conditions, a similar enterprise is the ward of the road supervisor.

273. **To open a new road** the petition of twelve freeholders residing in the vicinity is filed with the county commissioners. After due notice has been given the commissioners appoint three disinterested persons to view the route and report whether or not the proposed road would be of public utility. Provision is made for remonstrances, reviews and appeals to the circuit and higher courts, but, unless the measure is defeated at some one of these steps, the road is opened, according to an order of the board of commissioners describing the route and width thereof. Fences are then removed, and the supervisor is required to put the road in passable condition.

The land upon which highways are located does not belong to the public, but the public have a right to travel over the route, and grade and work it in any manner necessary for that purpose, using the timber, gravel, and other material found thereon when needed. The owner of land over which a new road is established is entitled to damages for the appropriation of his property.



An old road may be vacated by steps similar to those by which a new one is established, the land over which it passed reverting to the abutting owners, each of whom may claim to the middle of the road.

274. **County and Township Roads.** The state, as a whole, is out of the highway business, but counties are allowed to acquire free gravel, macadam, and turnpike roads, and keep them in repair by a general tax. The commissioners are constituted a board of turnpike directors for the management of all such roads in the county. The building of better roads was formerly encouraged by allowing companies to improve the public highways, and then charge a fee for the privilege of traveling upon them, but these "toll roads" have mostly passed out of existence, in one way or another. Roads not controlled by the county, or some turnpike company, are in charge of the township trustees, under whom are the road supervisors. The present law provides that the trustee may divide his township into not more than four road districts, which shall include no part of the territory of any town or city, and that the voters of each district shall meet annually at a time and place to be named by the township trustee, for the election of a supervisor therefor.

275. **The business of the supervisor** is to keep the roads in his district in repair, in doing which he may require all able bodied men between twenty-one and fifty to labor upon them from two to four days each year. The township road tax upon lands and personal property is also worked out under his supervision. This tax, which cannot exceed thirty cents on the one hundred dollars, is

levied by the trustee, with the assent of the advisory board and board of county commissioners, and the proceeds applied to the building and repair of highways. One against whom such tax is assessed may work it out, at the rate of \$1.25 a day for a hand and \$2.50 for a hand and team, or may, if he sees fit, pay it to the county treasurer, but in either case it is required to be applied upon the roads of the districts in which the land lies, or the owner of the personal property resides.

An additional tax of ten cents on the hundred dollars may be levied in the same way for the building and repair of bridges and culverts. It is paid to the county treasurer, and the proceeds become a part of the township road fund, in the hands of the township trustee.

276. **Streets, alleys and roads**, within the corporate limits of a city or town, are controlled by the municipality, and the law holds it responsible for any damage resulting from negligence in keeping them in proper repair. The citizens are exempt from road work under the supervisor's direction, as well as from the township road and bridge taxes, but may be required, by ordinance, to labor on the streets, and are always subject to corporation taxes for street and alley purposes.

277. **The building and repair of bridges** is largely governed by convenience. Cities and towns build their own where the cost is not too great, in which case the matter is taken up by the county commissioners. Culverts and small bridges, involving no special skill in their construction, are put in by the supervisor, employing the common district work, but where the structure is too extensive for

this to be done the township or county must lend a hand. If the estimated cost is under seventy-five dollars the trustee may order the work and pay for it out of his own road fund, but where it exceeds that amount he is required to submit the case to the commissioners, who, if they find that the public convenience requires it, build the bridge entirely at the county's expense, or by demanding a contribution of seventy-five dollars from the township.

Provisions are also made by which adjoining townships, separated by a stream, may each vote a special tax for the purpose of bridging it.

278. **Local assessments** are charges against certain tracts of land for the improvement of a street, construction of a drain, building of a dyke, levy, or turnpike, or some other work of a similar character. Here, as in general taxation, the justice of the tax depends upon the giving of benefits in return. If the whole city or county is helped alike by a public work, then all the taxpayers should be compelled to pay for it, but where particular property, such as the lots fronting upon a paved street, receives a peculiar enhancement in value, not shared in by the owners of similar property elsewhere, the burden is rightfully distributed according to the advantages conferred.

Under the present law the improvement of a street is done by assessing the abutting lots on each side of the intersecting streets with one-half the cost of the portion opposite such streets, the remainder of the entire cost being, *prima facie*, charged to the abutting lots in proportion to their frontage upon the improvement. The whole cost of levees and drains is assessed to the lands benefited, the

portion falling to roads being paid by the proper township, city, or town. A turnpike assessment is likely to fall upon any lands within two miles of the pike, in proportion to the benefits received.

279. **What Things Are Taxable.** In general, all property, personal and real, is to be listed at its fair cash value, but the statute makes a number of exceptions. Property of the United States, of this state, or any county, city, town, or township, and the interest bearing notes and bonds thereof; lands granted for the use of common schools, the personal and real estate of manual training schools; buildings used for educational, literary, scientific and charitable purposes, and the lands on which they stand; every building used for religious worship, together with its furniture and the parsonage belonging thereto; the state fair buildings and grounds; and every cemetery, are especially exempted from taxation; and the amount of a mortgage indebtedness, not exceeding seven hundred dollars, is allowed to be deducted from the assessed valuation of any real estate.

280. **A township assessor** would find it practically impossible to place an estimate upon the property of a railroad, telegraph, pipe line or express company, running through his township, for which reason the assessment of that class of property is left to the state board of tax commissioners. After ascertaining the entire taxable value of the property of any such company, the board assigns it to the several counties, in the proportion which the length of line in each county bears to the entire length of all the company's lines. The county auditor then apportions this



valuation to the townships, upon the same basis of mileage. The question of whether corporations of this class, whose wealth consists largely in public franchises, are to be assessed according to the market value of their capital stock, or upon the basis of their actual goods and chattels, is one upon which the last word has probably not been said. Legislatures favor the former view, which shifts upon such corporations a greater share of the burden of taxation, while the courts incline to hold that corporate property of any kind must be valued as other goods, chattels and real estate, no matter in what business it happens to be employed.

## CHAPTER XIX.

### Officers and Official Acts

281. **The status of officers.** under our form of government, is that of servants rather than masters of the people. They are chosen from among the people, either by direct vote or by the voice of some one to whom the power of appointment has been entrusted, and hold office as a responsible public trust. With but few exceptions, they are required to subscribe to a solemn oath and file a bond for the faithful performance of their duties. The settled policy is to discourage the formation of an official class by making the term of office short, requiring the incumbent to reside among his constituents, and in many cases ren-

dering him ineligible to more than one or two consecutive terms. Aside from the judiciary, the constitution fixes no term of office at more than four years, and the General Assembly is forbidden to create any office the tenure of which exceeds that limit.

282. In a certain sense the citizen, at the polls, delegates his authority over public matters to such persons as may be chosen to office, and becomes himself but a subject till election day again. In view of the vital questions settled by the ballot, elaborate provisions are made to prevent illegal voting and secure a free ballot and a fair count.

General elections are held bi-ennially, on the Tuesday following the first Monday in November of the even years, at which time successors are chosen to all elective officers whose terms expire before the next general election, excepting those of cities and towns and road and school districts.

283. **The county commissioners** establish the election precincts, but are required to have at least one in each township, and to so divide each township as to have, as nearly as practicable, two hundred, and in no case more than two hundred and fifty voters to the precinct. The polls are kept open from six o'clock in the morning till six at night, by an election board consisting of one inspector and two judges, assisted by two poll clerks and two deputy sheriffs; a judge, clerk and sheriff being chosen from each of the two leading political parties. All questions as to the right to vote, and the counting of the ballots, are set-

tled by the board, while the clerks do the clerical work and the sheriffs preserve the peace and order.

284. **Voters and Voting.** Male citizens of the United States, and those of foreign birth who have resided one year in the United States and legally declared their intention of becoming citizens, are voters, provided they have reached the age of twenty-one years, and resided six months in the state, sixty days in the township and thirty days in the precinct, immediately before the election.

Upon entering the election room, the voter announces his name, which is recorded by the poll clerks, from whom he receives one each of the state and local ballots and a blue pencil. With these he goes alone into one of the booths and prepares his ballot in secret, the names of all candidates for each office being so arranged that he may vote a "straight ticket," that is, vote for all the nominees of some one political party, by making a cross within the circle placed above the column and containing the emblem of that particular party. A mixed ticket is prepared by making a cross in the square before the name of each candidate for whom the elector wishes to vote. Before leaving the booth the voter folds his ballot, so that the initials of the poll clerk on the back, and no part of the face is visible. In that condition the inspector or one of the judges receives it and places it in the ballot box. The ballots are printed and distributed under official directions and no one is allowed to vote any other ballot than the one he receives from the poll clerk.

Careful provision is made against fraud and mistakes on the part of precinct and all other canvassing boards, rep-

resentatives from the leading political parties being allowed to witness every step, from the opening of the ballot box to the final declaration of the result. Any candidate feeling aggrieved may have a re-count of the vote and any election may be contested in the courts.

285. **Voting machines**, most ingeniously contrived for the rapid and accurate reception and registration of the vote, and for preventing frauds in voting and counting have come into general use in other states, and are being rapidly introduced in Indiana. Voting by this means, instead of the ballot system, is authorized by recent statutes, wherever the county commissioners see fit to purchase the machines.

286. **Vacancies in office** are guarded against, to a certain extent, by a constitutional provision that every officer except members of the General Assembly shall serve during the term for which he was elected and till his successor is elected and qualified. In case of death, resignation or removal of an officer, provision is made for filling the vacancy. If it occurs in the General Assembly an election is necessary, if in a state office or judgeship the governor appoints the successor, while the board of county commissioners is generally empowered to fill vacancies in county and township offices.

287. **The limits of official authority** are usually well marked, and in many cases severe penalties are pronounced upon those who overstep them. The governor may be impeached for misdemeanor in office; the courts nullify unconstitutional acts of the General Assembly; appeals lie to correct the errors of the courts and no official power tran-



scends the law. Officers handling money are held to a strict account; treasurers, high and low, being forbidden to receive or pay out money except upon the written order of the auditor or municipal clerk; councils and advisory boards hold the taxing power against commissioners and trustees, and hardly an officer, from the greatest to the least of them, is allowed to purchase his own supplies without advertising for competitive bids. In short, the proof is overwhelming that we lack unlimited confidence in the men we elect to office, yet very much is necessarily left to their judgment and honesty.

288. **Force and Effect of Official Acts.** The constitution of the United States declares that "full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state," and the law of Indiana applies the same principle internally. It rests upon no fiction of official infallibility but rather upon considerations of convenience. The equitable powers of a court are usually sufficient to prevent the doctrine being made a cover for fraud, and it does away with a multitude of evils likely to arise from leaving official acts and records open to question, and collateral attacks.

289. **Records as Evidence.** The public records of an office, board or council, whether of the state or a municipal corporation, are admissible as evidence of the matters they contain whenever such matters are called in question. The records themselves prove that a judgment was rendered, an ordinance passed or a deed recorded at a certain time, without the testimony of any person connected with the transaction. As a matter of convenience the officer in

charge of any record is usually authorized to append his certificate to a copy of any portion of its contents, stating that the same is "a full, true, and complete copy" thereof, which certificate renders the "transcript" or "certified copy" admissible wherever the record would be competent.

The above rules apply to acts of all office-holders, regardless of whether they hold by right or wrong. Even after one's election has been judicially declared to be fraudulent, acts done while performing the duties of the office have the same force as if done by a lawful incumbent. But where the office itself has no existence, as would be the case should one assume to act as mayor of a town, no degree of formality could add any force to his doings.

290. **Official Seals.** Many officers are required to have a seal capable of making an impression upon paper, which usually bears the name of the office and such other device as the officer may select. Official acts and certified copies of official records, when prepared by an officer having a seal, are authenticated by the signature of the officer and the impress of the seal, sometimes attested by another officer and sometimes alone. Acts of the state bear the state seal and the signatures of the governor and secretary of state; those of the county the seal of the board of commissioners and the auditor's signature, while cities are officially heard to speak under the corporate seal and the hand of the clerk and mayor.

291. **Legislative control** of offices created by the constitution is of course limited to matters not inconsistent with the constitutional provisions. Additional duties may be prescribed for the officer but none of those committed to

him can be assigned to any other person. When it is known at the time of a general election that a vacancy will occur in any such office before the next general election, the General Assembly cannot deprive the voters of the right to choose a successor thereto, nor can it deprive the officer of any part of the term for which he was chosen. In case of a statutory office no such limitations exist, and the General Assembly may shorten or lengthen the term at will, provided it is not made to exceed four years, or may even abolish the office.

292. **Attorneys at law** occupy a unique position among officers. They are officers of the courts in which they practice, being made such by an oath taken in open court to "support the constitution of the United States and of the state of Indiana and faithfully discharge the duties of an attorney-at-law." The constitution provides that, "Every person of good moral character, being a voter, shall be entitled to admission to practice law in all courts of justice," but this is not held to exclude other persons, and women are sometimes admitted to the bar. Lawyers are a great assistance to the court in the performance of its duties. As a general rule, pleadings and court papers of all kinds are given the same credit when signed by an attorney as when signed by the client himself. The client pays his own lawyer whatever sum they are able to agree upon, but in some cases the amount of a reasonable fee may be added to the judgment. A municipal corporation having business in court is expected to hire and pay its attorney the same as a private individual, in which case and no other he is paid out of the public treasury.

293. **Notaries public** are commissioned by the governor, upon recommendation of the circuit judge, the oath and bond being filed with the clerk of that court. The commission reads, "A notary public in and for the county of Fayette and state of Indiana," but it has been decided that a notary may act anywhere in the state. His principal duties are to take and certify acknowledgements of deeds, mortgages, leases, notices of mechanics' liens and other documents proper to be recorded; to administer oaths; protest notes, take depositions and authenticate other writings. He, also, is paid by those for whom he works, but the sum he is authorized to charge is regulated by statute. Many of the duties of a notary may be performed by other officers, such as justices of the peace, surveyors, clerks and commissioners of deeds.

294. **Impeachment.** The constitution provides that all state officers shall be liable to removal from office for crime, incapacity or neglect, and the statute states that all state officers, judges and prosecuting attorneys may be impeached for any misdemeanor in office, upon charges filed in the senate by managers elected by the house. Notice is given the officer to appear and answer, and he is privileged to object to the charge, plead guilty and allow the senate to assess his punishment or plead not guilty. In the latter case, or when he fails to appear at all, the senators are sworn truly and impartially to hear and determine the impeachment and the inquiry proceeds in somewhat the same manner as a jury trial. The vote is taken by ayes and noes, and unless two-thirds of the members elected are recorded in favor of conviction the accused stands acquitted.



The punishment may be by suspension or removal from office and disqualification to hold any office of honor, trust or profit under the state.

When the governor or lieutenant governor is impeached the chief justice of the supreme court presides but has no vote. Proceedings for the removal of judges or prosecuting attorneys may also be brought by the attorney-general in the supreme court.

District, county, township, city and town officers may be impeached upon accusations filed by the grand jury in the circuit or criminal courts. The trial is by jury, unless the accused pleads guilty, and the penalty is limited to removal from office.

Matters charged by way of impeachment may also conflict with the criminal laws of the state, but in no case are proceedings for that purpose allowed to defeat the criminal prosecution.

295. The duties of many officers are such as to make it impossible that the officer should discharge them all in person, and administrative officers are generally allowed to appoint deputies. To this class naturally belong state and county auditors and treasurers, clerks of courts, sheriffs, coroners, recorders, assessors, surveyors and constables, while the statutes add the attorney-general, gas supervisor, commissioner of fisheries and game, prosecuting attorneys and others entrusted with large discretionary powers. On the other hand the confidence in one's wisdom, integrity and sound judgment supposed to procure his election to the General Assembly or the office of judge, mayor, trus-

tee, county commissioner or councilman, renders that trust too sacred for other hands than his own.

The deputy subscribes to the same oath as his principal and is sometimes required to give bond, but the officer is liable for all the acts of his deputy and all transactions by or with the latter have the same effect as though participated in by the officer himself.

296. **Liability to Mandate and Damages.** The writ of mandate may issue from any circuit court, upon a proper affidavit and motion, to compel the performance of any duty resulting from office. It can never be employed to direct the manner of performance of the act or to control the discretionary powers entrusted to an officer, but is effective where he refuses to act at all. It has received the sanction of the supreme court when issued to compel a township trustee to meet with the other trustees of the county for the purpose of electing a county superintendent, to compel the board of commissioners to repair or rebuild a bridge and even to compel the governor, attorney-general and secretary and treasurer of state to pay a state debt when directed to do so by the General Assembly.

The writ of prohibition is but a negative form of mandamus issuing out of a higher court to prevent an inferior tribunal from proceeding in a matter over which it has no jurisdiction.

An officer and his sureties are liable upon the official bond to any one suffering injury from negligent or wrongful performance or failure to perform any official duty, and also when an officer exceeds his authority while acting under color thereof.

297. **Compensation of Officers.** With but few exceptions the law provides either a salary or some system of fees for every kind of official service. The latter system is usually employed where the services are such as to render it proper that they be paid for by the person for whom they are performed, rather than out of the public treasury. Such are the services of the recorder and surveyor, of justices of the peace and constables, notaries public and oil inspectors, and those rendered by the sheriff and clerks of the court, for either party to a law suit. Where the officer is to be paid out of the public treasury but the compensation regulated by the amount of work to be done, an allowance is made of so much per day for the time actually employed. In other cases, a fixed salary is provided for, to be paid monthly, quarterly or at other stated intervals out of the state, county or city treasury.

298. **The salaries paid** in the different counties and different classes of cities, differ according to the amount of work required of the officer. County commissioners receive \$2,200 in Marion county, and as little as \$100 in some of the smaller counties, and other officers are paid in proportion. The mayor of Indianapolis gets \$4,000 a year, and the council is empowered to increase the amount to \$5,000, while in cities of the fourth class the salary can not exceed \$1,500, and in those of the fifth class it may be as low as the council wishes to place it.

The following is a list of the salaries and amounts allowed for expenses of the state officers:

Adjutant General . . . . .	\$ 2,250 00
Clerk . . . . .	900 00
Stenographer . . . . .	600 00

Attorney General . . . . .	7,500 00
Assistant Attorney General . . . . .	2,400 00
First Deputy . . . . .	2,000 00
Second Deputy . . . . .	1,800 00
Traveling Deputy . . . . .	1,800 00
Stenographer . . . . .	900 00
Auditor of State . . . . .	7,500 00
Deputy . . . . .	2,500 00
Insurance Clerk . . . . .	1,800 00
Deputy Insurance Clerk . . . . .	1,000 00
Insurance Actuary . . . . .	2,000 00
Land Clerk . . . . .	1,800 00
Settlement Clerk . . . . .	1,600 00
Stenographer . . . . .	720 00
Board of Health, Secretary . . . . .	2,400 00
Clerk of Vital Statistics . . . . .	1,000 00
Members, for each meeting . . . . .	10 00
Expenses . . . . .	10,000 00
Commissioner Fisheries and Game . . . . .	1,200 00
Expenses . . . . .	7,500 00
Traveling expenses . . . . .	800 00
Custodian of Public Building . . . . .	1,500 00
Assistant Custodian . . . . .	900 00
Clerk . . . . .	900 00
Engineer State House . . . . .	1,500 00
Entomologist, expenses and per day . . . . .	2 50
Factory Inspector . . . . .	1,800 00
Chief Deputy . . . . .	1,500 00
Other Deputies . . . . .	1,000 00
Forestry Board, Secretary . . . . .	1,800 00
Members . . . . .	400 00
Clerk . . . . .	600 00
Office and traveling expenses . . . . .	1,000 00
Gas Inspector . . . . .	1,200 00
Assistant . . . . .	1,000 00
Expenses . . . . .	1,000 00
Geologist . . . . .	2,500 00
Clerk . . . . .	720 00
Custodian of Museum . . . . .	600 00
Expenses . . . . .	3,800 00
Governor . . . . .	8,000 00
Private Secretary . . . . .	1,500 00
Clerk . . . . .	1,200 00
Messenger . . . . .	1,000 00
Judge of Appellate Court . . . . .	6,000 00



Judge of Circuit Court . . . . .	2,500 00
Judge of Superior Court . . . . .	2,500 00
Judge of Supreme Court . . . . .	6,000 00
Judge of Criminal Court . . . . .	2,500 00
Law Librarian . . . . .	1,800 00
Librarian of State Library . . . . .	1,800 00
Reference Librarian . . . . .	1,100 00
Cataloguer . . . . .	1,100 00
Assistant and Stenographer . . . . .	900 00
Mine Inspector . . . . .	1,500 00
Assistant . . . . .	1,000 00
Clerk and Stenographer . . . . .	600 00
Expenses . . . . .	1,500 00
Oil Inspector . . . . .	2,500 00
Expenses . . . . .	900 00
Prosecuting Attorney, fees . . . . .	500 00
Quartermaster General . . . . .	1,200 00
Railroad Commission, Secretary . . . . .	2,500 00
Members . . . . .	4,000 00
Clerk . . . . .	1,500 00
Reporter of Supreme Court . . . . .	5,000 00
First Assistant . . . . .	1,800 00
Second Assistant . . . . .	1,000 00
Representatives, while in session, per day . . . . .	5 00
Secretary of State . . . . .	6,500 00
Deputy . . . . .	2,400 00
Clerk . . . . .	1,000 00
Clerk, Bureau of Printing . . . . .	1,200 00
Senators, while in session, per day . . . . .	5 00
Sheriff Supreme Court . . . . .	600 00
Statistician . . . . .	2,000 00
Deputy . . . . .	1,500 00
Stenographer . . . . .	720 00
Superintendent Laboratory of Hygiene . . . . .	2,000 00
Assistant . . . . .	1,500 00
Superintendent of Public Instruction . . . . .	3,000 00
Assistant . . . . .	2,000 00
Deputy . . . . .	1,500 00
Clerk . . . . .	1,200 00
Stenographer . . . . .	720 00
Treasurer of State . . . . .	6,500 00
Deputy . . . . .	2,000 00
Clerk . . . . .	720 00
Watchman . . . . .	600 00

## CHAPTER XX.

## How the Machinery Runs.

299. The mystery of government is but partially cleared away by enumerating the various officers and official boards of the state and her subdivisions, and mentioning the powers and duties entrusted to each. To many persons the state house, and even the court house and city hall, are strange places, inhabited by men whose mental processes differ widely from their own. Personal contact with any of these soon serves to dispel the illusion, and possibly something which may be said in this closing chapter may render them less unfamiliar.

300. The governor himself is human—some governors more so than others—and in making an appointment, or performing any other official act, is compelled to rely, to a considerable extent, upon the statements and opinions of prominent citizens in the part of the state, or particular calling, most vitally interested. The influence of mere numbers is often invoked by means of a popular petition; a personal letter from one prominent in business, politics, or philanthropic and religious work, is sure to be duly considered; but the most powerful influence upon gubernatorial action, aside from official information, is doubtless the personal interview of someone of well known probity and fairness, who knows whereof he speaks. These factors, together with the personal knowledge and personal character of the governor, form an equation from which his public acts are developed.

In the matter of recommending or approving legislation, the individual resources of the executive are more in play, but whatever the matter before him, a citizen is privileged to present his side of the question, and to do so becomes his duty when the governor is in danger of being misled by his silence.

301. The General Assembly goes its natural gait, and to know that gait is less destructive of peace and contentment of spirit than are some of the vague suspicions too frequently entertained. It works, perhaps, forty-five days in two years, and, while there is no crying demand for more of its product, the results, when calmly regarded, are far from surprising. Some of the members are unacquainted with the fabric of law they help to mutilate, and others, no doubt, seek selfish ends, but the right of a free choice of representatives involves the possibility of a mistake in the selection. Far too many bills are introduced, but one who enjoys the acquaintance of two or three senators and half a dozen representatives would expect some bickering, where fifty of the former and a hundred of the latter tried to agree upon anything under the sun, and a conglomeration of things as the basis of compromise. Ill-considered, ineffectual, and even vicious enactments are sometimes allowed to pass, while meritorious measures meet defeat, and corruption is frequently charged, though that hypothesis is infrequently established.

The constructive work is mostly done outside of the general chambers, and only an excited multitude could think of as many objections to a well considered law, or devise such variety of inadequate remedies, as the senate and house journals suggest. "The speaker is the house," said a prominent member of that body, and he might, perhaps with equal propriety, have added that the lieutenant governor is the senate. The character of legislation is fixed by the standing committees on cities, education, judiciary, finance, railroads, temperance, benevolent institutions, and other subjects prominently before the Assembly, and such committees are named by the presiding officer of each house.

Every member, as a rule, serves upon several committees, and is consequently unable to carefully consider the

bills which come before them, much less all those on which he is expected to vote. That the fate of a bill in committee depends more on the forces behind it than on its intrinsic merit is doubtless too often true, but at least one influential member of each house may usually be found to champion a desirable measure. When that is done early enough in the session the chances are fair to pilot it safely through the storms of the floor and the calms of the various committees and anchor it safely at last in the governor's sanctum sanctorum—provided there is no organized opposition.

When an actual battle is waged the result is always doubtful, but in a numerous popular assembly there is a leaven of common sense which rises to great occasions as surely as the opposite element in its make-up takes panic at fanciful perils, and with all the faults of the General Assembly we feel secure in its hands, and would thank no outsider to criticise it as freely as we do ourselves.

302. County business proceeds with little formality. The councilmen and commissioners are usually plain men, who speak their minds without rising or addressing the chairman. When a petition is presented asking for a bridge at some particular ford, they want to know where it is, what sort of a road it is on, how much travel passes that way, what the structure will probably cost, and how many bridges that locality is asking for. Each member tells what he knows about it, and the bystanders are called upon for informal testimony. If a motion is put at all, it is likely to be as a matter of form, after an agreement has been reached. The county attorney usually attends the meetings of both of these bodies, and one of his functions is to see that the will of the majority is expressed in legal form.

303. The government of cities under the new law has not passed the experimental stage but customs are being established. The mayor is a recognized power with each



of the administrative boards, few important steps being taken without his approval, and none in the face of his known opposition. Little formality attends the procedure of the boards, and meetings are frequently held in the open air, at the place of some proposed improvement, and a record afterward made of whatever is agreed upon. A citizen with suggestions or complaints to offer is seldom denied a hearing by the proper board or any of its members, or even by the mayor himself, which prevents the members of the police, fire and street renovating departments and other city employes from becoming indifferent to the wants of the people.

The method of dealing with problems in council, as well as the problems themselves, have changed since the days of Wouter Van Twiller and his Dutch successors, but not so radically as to render the Knickerbocker's history unprofitable. The council is still a deliberative body, holding regular public sessions, at which business is conducted with varying degrees of dignity and decorum. At the sound of the mayor's gavel the members, after finishing the various conversations in which they are engaged, with no appearance of undue haste, take their places before him to hear the reading of the minutes, reports of committees, complaints of citizens, suggestions of the mayor, and any new ordinances councilmen may see fit to introduce. The rules of parliamentary law are usually observed and routine business makes rapid progress, but matters of great moment, and sometimes those of no moment at all, have been known to receive warm discussion.

304. **The Courts.** Men are sometimes heard to boast of their ignorance of courts and court proceedings as if that were less humiliating than ignorance of any other great institution of society. In this they greatly err. Courts are open for the redress of private wrongs, and the mere fact of their existence prevents many times the number of wrongs that are actually brought to the forum.

Indiana is what is called a "Code State," that is, the technical forms of common law procedure have been abolished and simpler methods provided for by statute. The different forms in which common law cases were pleaded, such as ejectment, to recover possession of land; trover, to get back a chattel; assumpsit, to collect a common debt, and trespass *vi et arms*, to obtain damage for a willful injury of the person, have all been merged into what is called a "civil action," though the old terms are still sometimes used among lawyers.

305. A **civil action** is begun by filing a complaint with the clerk of the court, in which the facts of the case are stated in plain language, and a judgment is asked for whatever the plaintiff thinks he is entitled to. The clerk issues a writ commanding the sheriff to summons the defendant to appear in court on a particular day to answer the complaint. This does not mean that the case is for trial on that day, but that unless defendant appear by that time the court will accept the complaint as true and render judgment accordingly. If defendant wishes to "fight the case" he employs an attorney, who writes his own name upon the proper docket, as notice of his employment, and from that time on the proceedings are conducted by the lawyers in the names of their clients.

306. **Pleadings and Issue.** The controversy is narrowed to points actually in dispute, and on which the legal rights of the parties depend, by a series of alternate written statements called pleadings. They formerly continued till some one vital fact was asserted on one side and denied on the other, which placed the cause "at issue," but time is now gained, perhaps at the expense of clearness, by the practice of denying a fact, and admitting and trying to explain it away, all at the same time. The complaint, answer and reply are still allowed, any of which may be amended if found to be bad on demurrer.

A demurrer raises an issue of law. If addressed to the

complaint the judge is called upon to decide whether or not the plaintiff would be entitled to judgment even though all the statements of his complaint were true; if addressed to the answer, the question is whether a legal defense has been set out. A demurrer to the reply is said to search the record, since it must be sustained unless the plaintiff can recover after conceding the truth of all the averments on both sides. When the question is as to the truth, instead of the legal sufficiency of the averments, an issue of fact is raised.

307. **The Jury.** Issues of fact in divorce cases, injunction suits, and a few other special proceedings, are tried by the judge alone, but in most cases they are tried by jury unless the parties agree to submit them to the court. In a jury trial the first step is the selection of a jury. The twelve men forming the regular panel stand at their places in the jury box, with right hands uplifted, while the clerk repeats: "You, and each of you, do solemnly swear that you will true answers make to such questions as may be asked you under the direction of the court, touching your qualifications to sit as jurors in the cause about to be tried as you shall answer unto God", to which the twelve assent with sundry affirmative nods and mumblings. The attorney on whom rests the burden of proof briefly states the nature of the case and asks each juror as to his relationship to the parties, knowledge of, or interest in, the case, and other kindred matters. The statutes provide several causes for which a juror may be challenged and each side may excuse as many as six without giving any reason. As fast as jurors are excused the sheriff fills their places with any competent men he can find—voters and either freeholders or householders of the county. When both sides are satisfied, the jurors are again sworn to "well and truly try the issues joined and a true verdict render, according to the law and the evidence."

308. **The trial** begins by the attorney on each side stat-

ing the facts that he expects to prove, and the witnesses are sworn to testify to "the truth, the whole truth and nothing but the truth". A witness or juror, however, who has scruples against taking an oath may "sincerely declare and affirm, under the pains and penalties of perjury", instead. A court reporter is usually called to take down the evidence in shorthand, for use should the case be appealed. The attorney calling a witness questions him first on such points as he chooses, and the opposing attorney may afterward cross-examine him upon the same matters. When a question is asked which, in the opinion of opposing counsel, has no bearing on the case, or calls for matters excluded by the law of evidence, he may object and allow the court to decide whether or not it shall be answered. Some lawyers indulge in numerous objections and much loud talk, bantering and bluster, all of which is to the case as the braying of baggage mules to a battle.

At the close of the evidence the lawyers may argue the case before the jury, plaintiff's attorney usually having the first and last speeches, after which the judge instructs the jury as to the law of the case. The jury are the judges of what the evidence proves, but not, as in a criminal case, of the law also, it being their duty to accept that as stated by the court.

309. **Verdict and Judgment.** The jury retires in charge of a bailiff, and the twelve are kept together till a verdict is reached, when it is signed by the foreman and returned into open court. The form may be: "We, the jury, find for the defendant," or, "We, the jury, find for the plaintiff, that he recover damages in the sum of one thousand dollars." Numerous other steps may be taken in a case, but if judgment is finally rendered on the verdict for plaintiff and the amount is not paid, the sheriff may seize and sell the defendant's property to make up the amount.

310. **Speaking generally,** the government of Indiana is well designed to secure the enactment of such laws as the



majority of the people favor, and the peace and security of society are carefully guarded. Ample provision is made for the education, both primary and advanced, of the children and young people. The health and morals of the community are more and more considered as time goes by; special attention is given to industries needing the state's protection; the needy and unfortunate classes are fairly provided for, and care is taken to foster sentiments of patriotism and state pride among people of all conditions and ages.

311. The legitimate vices of republicanism are ours to satiety. Too many men hold responsible offices as a reward for party service; the party machinery, organized to register the popular will regarding the national government, is made to do duty in local elections to which the principles of the party have not even the remotest application. The most advanced ideas can never be enacted into law, and a measure, however desirable, must wait till a majority becomes awake to its merits, often with interests which profit by an abuse dispensing a strong propaganda against it. Laws for the encouragement of sobriety and good morals are enforced by the local authorities only to the extent that a righteous public sentiment cries out that they must be.

312. Finally, avoiding the perilous exhilaration of optimism as well as the disagreeable mania of pessimism, be it gravely affirmed that no community in all the earth, so far as the writer is aware, enjoys a constitution and system of laws which, in theory and practical operation, are better adapted to the wants of the people than those of Indiana.

The system is far from perfection, nor are we a perfect people, but the end of time is apparently remote and improvement may fairly be counted upon.

## APPENDIX.

### How the Soil of Indiana Became Free—Famous "Ordinance of 1787."

IN CONGRESS, July 13, 1787.

*"An Ordinance for the Government of the Territory of the United States Northwest of the River Ohio".*

After providing for the temporary government of such territory as one district, with a governor, legislative council and house of representatives of five members each, secretary and judges, all appointed by congress, the ordinance proceeds as follows:

"And for extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws, and constitutions, are erected; to fix and establish those principles as the basis of all laws, constitutions, and governments, which forever hereafter shall be formed in the said territory; to provide, also, for the establishment of states, and permanent government therein, and for their admission to a share in the federal councils on an equal footing with the original states, at as early periods as may be consistent with the general interest:

It is hereby ordained and declared, by the authority aforesaid, That the following articles shall be considered as articles of compact between the original states and the people and states in the said territory, and forever remain unalterable, unless by common consent, to wit:

ART. 1. No person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship or religious sentiments, in the said territory.

ART. 2. The inhabitants of the said territory shall

always be entitled to the benefits of the writ of habeas corpus, and of the trial by jury; of a proportionate representation of the people in the legislature, and of judicial proceedings according to the course of the common law. All persons shall be bailable, unless for capital offenses, where the proof shall be evident, or the presumption great. All fines shall be moderate; and no cruel or unusual punishments shall be inflicted. No man shall be deprived of his liberty or property, but by the judgment of his peers, or the law of the land, and should the public exigencies make it necessary, for the common preservation, to take any man's property, or to demand his particular services, full compensation shall be made for the same. And, in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made, or have force in the said territory, that shall, in any manner whatever, interfere with, or affect, private contracts or engagements, bona fide, and without fraud, previously formed.

ART. 3. Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and in their property, rights, and liberty, they never shall be invaded or disturbed unless in just and lawful wars authorized by congress; but laws founded in justice and humanity shall from time to time be made, for preventing wrongs being done to them, and for preserving peace and friendship with them.

ART. 4. That said territory, and the states which may be formed therein, shall forever remain a part of this confederacy of the United States of America, subject to the articles of confederation, and to such alterations therein as may be constitutionally made; and to all the acts and ordinances of the United States in congress assembled, con-

formable thereto. The inhabitants and settlers in the said territory shall be subject to pay a part of the federal debts, contracted or to be contracted, and a proportional part of the expenses of government, to be apportioned on them by congress; according to the same common rule and measure by which apportionments thereof shall be made on the other states; and the taxes for paying their proportion, shall be laid and levied by the authority and direction of the legislature of the district or districts, or new states, as in the original states, within the time agreed upon by the United States in congress assembled. The legislatures of those districts, or new states, shall never interfere with the primary disposal of the soil of the United States in congress assembled, nor with any regulations congress may find necessary, for securing the title in such soil, to the bona fide purchasers. No tax shall be imposed on lands the property of the United States; and in no case shall non-resident proprietors be taxed higher than residents. The navigable waters leading into the Mississippi or St. Lawrence, and the carrying places between the same, shall be common highways, and forever free, as well to the inhabitants of the said territory, as to the citizens of the United States, and those of any other states that may be admitted into the confederacy, without any tax, impost, or duty therefor.

ART. 5. There shall be formed in the said territory, not less than three, nor more than five states; and the boundaries of the states, as soon as Virginia shall alter her act of cession, and consent to the same, shall become fixed and established as follows, to wit: The western state in the said territory shall be bounded by the Mississippi, the Ohio, and Wabash rivers; a direct line drawn from the Wabash and Post Vincents, due north, to the territorial line between the United States and Canada; and by the said territorial line to the Lake of the Woods and Mississippi. The middle state shall be bounded by the said direct line, the Wabash, from Post Vincents to the Ohio, by



the Ohio, by a direct line drawn due north from the mouth of the Great Miami to the said territorial line. The eastern state shall be bounded by the last mentioned direct line, the Ohio, Pennsylvania, and the said territorial line: provided, however, and it is further understood and declared, that the boundaries of these three states shall be subject so far to be altered, that, if congress shall hereafter find it expedient, they shall have authority to form one or two states in that part of the said territory, which lies north of an east and west line drawn through the southerly bend or extreme of Lake Michigan. And whenever any of the said states shall have sixty thousand free inhabitants therein, such state shall be admitted, by its delegates, into the congress of the United States on an equal footing with the original states, in all respects whatever; and shall be at liberty to form a permanent constitution and state government; provided the constitution and government, so to be formed, shall be republican, and in conformity to the principles contained in these articles; and, so far as it can be consistent with the general interest of the confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the state than sixty thousand.

ART. 6. There shall be neither slavery nor involuntary servitude in said territory, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted; provided always, that any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original states, such fugitive may be lawfully reclaimed, and conveyed to the person claiming his or her labor or service as aforesaid.

## How Indiana Got Into the Union of States—The Enabling Act.

### ACT OF CONGRESS.

AN ACT to enable the people of the Indiana Territory to form a constitution and state government, and for the admission of such state into the Union on an equal footing with the original states.

[APPROVED, APRIL 19, 1816.]

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the inhabitants of the territory of Indiana be, and they are hereby authorized, to form for themselves a constitution and state government, and to assume such name as they shall deem proper; and the said state, when formed, shall be admitted into the Union upon the same footing with the original states, in all respects whatever.

SEC. 2. *And be it further enacted*, That the said state shall consist of all the territory included within the following boundaries, to wit: Bounded on the east by the meridian line which forms the western boundary of the state of Ohio; on the south, by the river Ohio, from the mouth of the Great Miami river, to the mouth of the river Wabash; on the west, by a line drawn along the middle of the Wabash, from its mouth to a point where a due north line drawn from the town of Vincennes would last touch the northwestern shore of the said river; and from thence by a due north line, until the same shall intersect an east and west line drawn through a point ten miles north of the southern extreme of lake Michigan; on the north, by the said east and west line, until the same shall intersect the first mentioned meridian line, which forms the western boundary of the state of Ohio, *Provided*, That the convention hereinafter provided for, when formed, shall ratify the boundaries aforesaid; otherwise they shall be and remain as now prescribed by the ordinance for the govern-

ment of the territory northwest of the river Ohio: *Provided, also,* That the said state shall have concurrent jurisdiction on the river Wabash, with the state to be formed west thereof, so far as the said river shall form a common boundary to both.

SEC. 3. *And be it further enacted,* That all male citizens of the United States, who shall have arrived at the age of twenty-one years, and resided in the territory at least one year previous to the day of election, and shall have paid a county or territorial tax; and all persons having in other respects the legal qualifications to vote for representatives in the general assembly of said territory, be, and they are hereby authorized to choose representatives to form a convention, who shall be apportioned among the several counties within the said territory, according to the apportionment made by the legislature thereof, at their last session, to wit: From the county of Wayne, four representatives; from the county of Franklin, five representatives; from the county of Dearborn, three representatives. from the county of Switzerland, one representative; from the county of Jefferson, three representatives; from the county of Clark, five representatives; from the county of Harrison, five representatives; from the county of Washington, five representatives; from the county of Knox, five representatives; from the county of Gibson, four representatives; from the county of Posey, one representative; from the county of Warrick, one representative; and from the county of Perry, one representative. And the election for the representatives aforesaid, shall be holden on the second Monday of May, one thousand eight hundred and sixteen, throughout the several counties in said territory; and shall be conducted in the same manner, and under the same penalties, as prescribed by the laws of said territory, regulating elections therein for members of the house of representatives.

SEC. 4. *And be it further enacted,* That the members

of the convention, thus duly elected, be, and they are hereby authorized, to meet at the seat of the government of the said territory on the second Monday of June next; which convention, when met, shall first determine, by a majority of the whole number elected, whether it be, or be not expedient at that time, to form a constitution and state government for the people within the said territory; and if it be determined to be expedient, the convention shall be, and hereby are, authorized to form a constitution and state government; or if it be deemed more expedient, the said convention shall provide by ordinance for electing representatives to form a constitution or frame of government, which said representatives shall be chosen in such manner, and in such proportion, and shall meet at such time and place, as shall be prescribed by the said ordinance; and shall then form for the people of said territory, a constitution and state government: *Provided,* That the same, whenever formed, shall be republican, and not repugnant to those articles of the ordinance of the thirteenth of July, one thousand seven hundred and eighty-seven, which are declared to be irrevocable between the original states and the people and states of the territory northwest of the river Ohio; excepting so much of said articles as relate to the boundaries of the states therein to be formed.

SEC. 5. *And be it further enacted,* That until the next general census shall be taken, the said state shall be entitled to one representative in the house of representatives of the United States.

SEC. 6. *And be it further enacted,* That the following propositions be, and the same are hereby offered to the convention of the said territory of Indiana, when formed, for their free acceptance or rejection, which, if accepted by the convention, shall be obligatory upon the United States:

*First.* That the section numbered sixteen, in every township, and when such section has been sold, granted or disposed of, other lands, equivalent thereto, and most con-



tiguous to the same, shall be granted to the inhabitants of such township for the use of schools.

*Second.* That all salt springs within the said territory, and the land reserved for the use of the same, together with such other lands as may, by the President of the United States, be deemed necessary and proper for working the said salt springs, not exceeding in the whole, the quantity contained in thirty-six entire sections, shall be granted to the said state, for the use of the people of the said state, the same to be used under such terms, conditions, and regulations as the legislature of the said state shall direct; provided the said legislature shall never sell nor lease the same, for a longer period than ten years at any one time.

*Third.* That five per cent. of the net proceeds of the lands lying within the said territory, and which shall be sold by congress from and after the first day of December next, after deducting all expenses incident to the same, shall be reserved for making public roads and canals, of which three-fifths shall be applied to those objects within the said state, under the direction of the legislature thereof, and two-fifths to the making of a road or roads leading to the said state under the direction of congress.

*Fourth.* That one entire township, which shall be designated by the President of the United States, in addition to the one heretofore reserved for that purpose, shall be reserved for the use of a seminary of learning, and vested in the legislature of the said state, to be appropriated solely to the use of such seminary by the said legislature.

*Fifth.* That four sections of land be, and the same are hereby granted to the said state, for the purpose of fixing their seat of government thereon, which four sections shall, under the direction of the legislature of said state, be located at any time in such township and range, as the legislature aforesaid may select, on such lands as may hereafter be acquired by the United States, from the Indian tribes within the said territory: *Provided.* That such locations

shall be made prior to the public sale of the lands of the United States, surrounding such location: *And provided always,* That the five foregoing propositions, herein offered, are, on the conditions that the convention of the said state shall provide by an ordinance irrevocable, without the consent of the United States, that every and each tract of land sold by the United States, from and after the first day of December next, shall be and remain exempt from any tax, laid by order or under authority of the state, whether for state, county, or township, or any other purpose whatever, for the term of five years, from and after the day of sale.

#### ORDINANCE.

*Be it ordained by the representatives of the people of the Territory of Indiana, in convention met at Corydon, on Monday, the tenth of June, in the year of our Lord eighteen hundred and sixteen,* That we do, for ourselves and our posterity agree, determine, declare, and ordain, that we will and do hereby accept the propositions of the Congress of the United States, as made and contained in their act of the nineteenth day of April, eighteen hundred and sixteen, entitled "an act to enable the people of the Indiana territory to form a state government and constitution, and for the admission of such state into the Union, on an equal footing with the original states."

And we do, further for ourselves and our posterity, hereby ratify, confirm, and establish, the boundaries of the said state of Indiana, as fixed, prescribed, laid down, and established, in the act of Congress aforesaid; and we do also, further for ourselves and posterity, hereby agree, determine, declare and ordain, that each and every tract of land sold by the United States, lying within the said state,

and which shall be sold from and after the first day of December next, shall be and remain exempt from any tax laid by order or under any authority of the said state of Indiana, or by or under the authority of the general assembly thereof, whether for state, county, or township, or any other purpose whatever, for the term of five years from and after the day of sale of any such tract of land; and we do, moreover, for ourselves and our posterity, hereby declare and ordain, that this ordinance, and every part thereof, shall forever be and remain irrevocable and inviolate, without the consent of the United States, in Congress assembled, first had and obtained for the alteration thereof, or any part thereof.

JONATHAN JENNINGS,  
President of the Convention.

Attest, WILLIAM HENDRICKS, Secretary.  
June 29, 1816.

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